



Montana Legislative History

Chapter: 214 Session L: 2009

Bill Number: 534 House

Checklist of Bill History

History and Final Status Sheet	x
Introduced Bill	X
Fiscal Note	X
Third Reading Bill	X
Final Version of Bill	X

House

Committee:
Judiciary

Hearing Date(s):

[Feb. 19, 2009](#) (no
summary minutes
available)

[Feb. 20, 2009](#)
(Exec. Action)

Senate

Committee:
Judiciary

Hearing Date(s):

[March 19, 2009](#)

[March 30, 2009](#) (Executive Action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by:

Date:

Notes:

Bill Draft Number: LC1274

Bill Type - Number: HB 534

Short Title: Require audio-video recording of custodial interrogations

Primary Sponsor: Margaret H Campbell (D) HD 31

Chapter Number: 214

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 57

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/15/2009			
(H) Signed by Governor	04/15/2009			
(H) Transmitted to Governor	04/09/2009			
(S) Signed by President	04/09/2009			
(H) Signed by Speaker	04/09/2009			
(H) Returned from Enrolling	04/08/2009			
(C) Printed - New Version Available	04/08/2009			
(H) Sent to Enrolling	04/07/2009			
(H) 3rd Reading Passed as Amended by Senate	04/07/2009	81	17	
(H) Scheduled for 3rd Reading	04/07/2009			
(H) 2nd Reading Senate Amendments Concurred	04/06/2009	84	13	
(H) Scheduled for 2nd Reading	04/06/2009			
(S) Returned to House with Amendments	04/02/2009			
(S) 3rd Reading Concurred	04/02/2009	44	5	
(S) Scheduled for 3rd Reading	04/02/2009			
(S) 2nd Reading Concurred on Voice Vote	04/01/2009	46	4	
(S) Scheduled for 2nd Reading	04/01/2009			
(S) 2nd Reading Pass Consideration	03/31/2009			
(S) Scheduled for 2nd Reading	03/31/2009			
(C) Printed - New Version Available	03/30/2009			
(S) Committee Report--Bill Concurred as Amended	03/30/2009			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	03/30/2009	12	0	(S) Judiciary
(S) Hearing	03/19/2009			(S) Judiciary
(S) Referred to Committee	03/02/2009			(S) Judiciary
(S) First Reading	03/02/2009			
(H) Transmitted to Senate	02/25/2009			
(H) 3rd Reading Passed	02/24/2009	71	29	
(H) Scheduled for 3rd Reading	02/24/2009			
(H) 2nd Reading Passed	02/23/2009	67	31	
(H) Scheduled for 2nd Reading	02/23/2009			
(C) Printed - New Version Available	02/20/2009			
(H) Committee Report--Bill Passed as Amended	02/20/2009			(H) Judiciary
(H) Committee Executive Action--Bill Passed as Amended	02/20/2009	14	4	(H) Judiciary

(H) Hearing	02/19/2009	(H) Judiciary
(H) Fiscal Note Printed	02/18/2009	
(H) Fiscal Note Signed	02/18/2009	
(H) Fiscal Note Received	02/18/2009	
(C) Introduced Bill Text Available Electronically	02/10/2009	
(H) Referred to Committee	02/10/2009	(H) Judiciary
(H) First Reading	02/10/2009	
(H) Fiscal Note Requested	02/10/2009	
(H) Introduced	02/10/2009	
(C) Draft Delivered to Requester	02/06/2009	
(C) Draft Ready for Delivery	02/06/2009	
(C) Draft in Assembly/Executive Director Review	02/06/2009	
(C) Draft in Final Drafter Review	02/06/2009	
(C) Bill Draft Text Available Electronically	02/06/2009	
(C) Draft in Input/Proofing	02/06/2009	
(C) Draft to Drafter - Edit Review [SAB]	02/06/2009	
(C) Draft in Edit	02/06/2009	
(C) Draft in Legal Review	02/05/2009	
(C) Draft to Requester for Review	02/02/2009	
(C) Draft Taken Off Hold	02/02/2009	
(C) Draft On Hold	12/12/2008	
(C) Draft to Requester for Review	12/11/2008	
(C) Fiscal Note Probable	12/02/2008	
(C) Draft Request Received	12/02/2008	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Campbell	Margarett	H
Drafter	Lane	Valencia	
Primary Sponsor	Campbell	Margarett	H

Subjects

Description	Revenue/Approp. Vote Majority Req.	Subject Code
Criminal Procedure (see also: Law Enforcement)	Simple	CRP
Law Enforcement (see also: Criminal Procedure)	Simple	LEN
Local Government Fiscal Impact	Simple	LFI

Additional Bill Information

Fiscal Note Probable: Yes
Preintroduction Required: N
Session Law Ch. Number: 214

DEADLINE

Category: General Bills

Transmittal Date: 02/26/2009

Return (with 2nd house amendments) Date: 04/02/2009

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 01-OCT-09

the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(5) (a) The trustees may submit a proposition to the qualified electors of the district for a levy to provide funding for transition costs incurred when the trustees:

- (i) open a new school under the provisions of Title 20, chapter 6;
- (ii) close a school;
- (iii) replace a school building; or
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6.

(b) Except as provided in subsections (5)(c) and (6), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. Except as provided in subsection (6), the duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

- (i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and
- (ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years."

Approved April 15, 2009

CHAPTER NO. 214

[HB 534]

AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

(1) provide the best evidence of the communications that occurred during an interrogation;

(2) prevent disputes about a peace officer's conduct or treatment of a suspect during the course of an interrogation;

(3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;

(4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe;

(5) enhance public confidence in the criminal process; and

(6) have been encouraged by the Montana supreme court in a written opinion of that court.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Custodial interrogation" means an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony or, in the case of a youth, an offense that would be a felony if committed by an adult if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense.

(2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.

(3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, office, or other structure in this state where persons are held in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

Section 3. Recordings required. Except as provided in [section 4], all custodial interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview.

Section 4. Exceptions to custodial recording requirements. A judge shall admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:

(1) the statements have been made voluntarily and are reliable; or

(2) one or more of the following circumstances existed at the time of the custodial interrogation:

(a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;

(b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;

(c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;

(d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;

(e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;

(f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or

(g) the person's statement was made spontaneously and not in response to a question.

Section 5. Cautionary jury instruction. If the defendant objects to the introduction of evidence under [section 3] and the court finds by a preponderance of the evidence that the statements are admissible, the judge shall, upon motion of the defendant, provide the jury with a cautionary instruction.

Section 6. Handling and preservation of electronic recordings. (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 6].

Approved April 15, 2009

CHAPTER NO. 215

[HB 572]

AN ACT ESTABLISHING A PROGRAM AND CRITERIA TO PROVIDE STATE MATCHING GRANTS FOR FEDERAL SMALL BUSINESS INNOVATIVE RESEARCH GRANTS OR FEDERAL SMALL BUSINESS TECHNOLOGY TRANSFER GRANTS; AMENDING SECTION 90-1-147, MCA; AND PROVIDING AN EFFECTIVE DATE .

Be it enacted by the Legislature of the State of Montana:

Section 1. Small business state matching grant program — purpose.

(1) There is a small business state matching grant program established within the department of commerce to provide guidelines and state matching grants to businesses meeting the criteria in [section 2] that have received phase I funding

HOUSE BILL NO. 534
INTRODUCED BY M. CAMPBELL

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

- (1) provide the best evidence of the communications that occurred during an interrogation;
- (2) prevent disputes about a law enforcement officer's conduct or treatment of a suspect during the course of an interrogation;
- (3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;
- (4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe; and
- (5) enhance public confidence in the criminal process.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

- (1) "Custodial interrogation" means any interrogation in a place of detention involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider the person to be in custody, beginning when a person should have been advised of the person's Miranda rights and ending when the questioning has completely finished.
- (2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.
- (3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, or other place where persons are questioned in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

NEW SECTION. Section 3. Recordings required. All statements made by a person during a custodial interrogation relating to an offense punishable as a felony under Montana or federal law or, in the case of a youth, an offense that would be a felony if committed by an adult must be electronically recorded.

NEW SECTION. Section 4. Presumption of inadmissibility. Except as provided in [sections 5 and 6], all statements made by a person during a custodial interrogation that are not electronically recorded are inadmissible as evidence against the person in any criminal or youth court proceeding brought against the person. Inadmissibility under this section is a disputable presumption and may be controverted as provided in [section 5].

NEW SECTION. Section 5. Overcoming presumption of inadmissibility. The presumption of inadmissibility of statements provided in [section 4] may be overcome and statements that were not electronically recorded may be admitted into evidence in a criminal or youth court proceeding brought against the person if the court finds that:

- (1) the statements are admissible under applicable rules of evidence;
- (2) the statements are proven by a preponderance of evidence to have been made voluntarily and are reliable;
- (3) it is proved by a preponderance of evidence that one or more of the following circumstances existed at the time of the custodial interrogation:
 - (a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;
 - (b) before or during a custodial interrogation, after having consulted with the person's lawyer, the person unambiguously declared on videotape that the person would only respond to the law enforcement officer's questions if the person's statements were not electronically recorded;
 - (c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not feasible; or
 - (d) exigent circumstances existed that prevented the making of or rendered it not feasible to make an electronic recording of the custodial interrogation.

NEW SECTION. **Section 6. Exceptions.** [Sections 1 through 7] do not preclude the admission of any of the following:

- (1) a statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;
- (2) a spontaneous statement that is not made in response to a question;
- (3) a statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state in compliance with the law of that jurisdiction.

NEW SECTION. **Section 7. Handling and preservation of electronic recordings.** (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 7].

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 534

INTRODUCED BY CAMPBELL, FRENCH, HAMILTON, MCCHESENEY, SANDS, WILMER, LASLOVICH,
SHOCKLEY, WINDY BOY, HAMLETT, JENT, STEWART-PEREGOY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT;~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

- (1) provide the best evidence of the communications that occurred during an interrogation;
- (2) prevent disputes about a ~~law enforcement~~ PEACE officer's conduct or treatment of a suspect during the course of an interrogation;
- (3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;
- (4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe; ~~and~~
- (5) enhance public confidence in the criminal process; AND
- (6) HAVE BEEN ENCOURAGED BY THE MONTANA SUPREME COURT IN A WRITTEN OPINION OF THAT COURT.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7 6], the following definitions apply:

- (1) "Custodial interrogation" means ~~any interrogation in a place of detention involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider the person to be in custody, beginning when a person should have been advised of the person's Miranda rights and ending when the questioning has completely finished~~ AN INTERVIEW CONDUCTED BY A PEACE OFFICER IN A PLACE OF DETENTION FOR THE PURPOSE OF INVESTIGATING A FELONY IF THE INTERVIEW IS REASONABLY LIKELY TO ELICIT A RESPONSE FROM THE PERSON BEING INTERVIEWED THAT MAY INCRIMINATE THE PERSON BEING INTERVIEWED WITH REGARD TO THE COMMISSION OF AN OFFENSE.

(2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.

(3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, ~~or other place where persons are questioned~~ OFFICE, OR OTHER STRUCTURE IN THIS STATE WHERE PERSONS ARE HELD in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

NEW SECTION. Section 3. Recordings required. ~~All statements made by a person during a custodial interrogation relating to an offense punishable as a felony under Montana or federal law or, in the case of a youth, an offense that would be a felony if committed by an adult must be electronically recorded.~~ EXCEPT AS PROVIDED IN [SECTION 4], ALL CUSTODIAL INTERROGATIONS MUST BE ELECTRONICALLY RECORDED. THE RECORDING MUST CONTAIN A PEACE OFFICER ADVISING THE PERSON BEING INTERVIEWED OF THE PERSON'S MIRANDA RIGHTS, A RECORDING OF THE INTERVIEW, AND A CONCLUSION OF THE INTERVIEW.

~~NEW SECTION. Section 4. Presumption of inadmissibility.~~ Except as provided in [sections 5 and 6], ~~all statements made by a person during a custodial interrogation that are not electronically recorded are inadmissible as evidence against the person in any criminal or youth court proceeding brought against the person. Inadmissibility under this section is a disputable presumption and may be controverted as provided in [section 5].~~

~~NEW SECTION. Section 5. Overcoming presumption of inadmissibility.~~ The presumption of inadmissibility of statements provided in [section 4] may be overcome and statements that were not electronically recorded may be admitted into evidence in a criminal or youth court proceeding brought against the person if the court finds that:

~~(1) the statements are admissible under applicable rules of evidence;~~

~~(2) the statements are proven by a preponderance of evidence to have been made voluntarily and are reliable;~~

~~(3) it is proved by a preponderance of evidence that one or more of the following circumstances existed at the time of the custodial interrogation:~~

~~(a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;~~

~~—— (b) before or during a custodial interrogation, after having consulted with the person's lawyer, the person unambiguously declared on videotape that the person would only respond to the law enforcement officer's questions if the person's statements were not electronically recorded;~~

~~—— (c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not feasible; or~~

~~—— (d) exigent circumstances existed that prevented the making of or rendered it not feasible to make an electronic recording of the custodial interrogation.~~

NEW SECTION. Section 4. Exceptions TO RECORDING REQUIREMENT. ~~{Sections 1 through 7}~~ do not preclude the admission of any of the following:

~~—— (1) a statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;~~

~~—— (2) a spontaneous statement that is not made in response to a question;~~

~~—— (3) a statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state in compliance with the law of that jurisdiction. A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT WAS NOT RECORDED AS REQUIRED IN [SECTION 3] IS ADMISSIBLE IF THE COURT FINDS THAT:~~

~~(1) THE STATEMENT WAS MADE DURING ROUTINE PROCESSING OR BOOKING OF THE PERSON OR DURING ROUTINE BORDER INQUIRIES;~~

~~(2) THE STATEMENT WAS MADE BY THE ACCUSED IN OPEN COURT DURING TRIAL, BEFORE A GRAND JURY, OR AT A PRELIMINARY HEARING;~~

~~(3) THE STATEMENT WAS A SPONTANEOUS STATEMENT THAT WAS NOT MADE IN RESPONSE TO A QUESTION;~~

~~(4) THE STATEMENT WAS MADE DURING A CUSTODIAL INTERROGATION THAT WAS CONDUCTED IN ANOTHER STATE BY PEACE OFFICERS OF THAT STATE IN COMPLIANCE WITH THE LAWS OF THAT STATE;~~

~~(5) AFTER HAVING CONSULTED WITH THE PERSON'S LAWYER OR AFTER THE PERSON HAS WAIVED THE PERSON'S RIGHT TO HAVE AN ATTORNEY PRESENT DURING THE CUSTODIAL INTERROGATION, THE PERSON AGREED TO PARTICIPATE IN THE CUSTODIAL INTERROGATION WITHOUT AN ELECTRONIC RECORDING BEING MADE AND, IF FEASIBLE, THE PERSON'S AGREEMENT WAS ELECTRONICALLY RECORDED BEFORE THE CUSTODIAL INTERROGATION BEGAN; OR~~

~~(6) THE PEACE OFFICER IN GOOD FAITH FAILED TO MAKE AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION BECAUSE THE OFFICER INADVERTENTLY FAILED TO OPERATE THE RECORDING EQUIPMENT PROPERLY OR, WITHOUT THE OFFICER'S KNOWLEDGE, THE RECORDING EQUIPMENT MALFUNCTIONED OR STOPPED OPERATING.~~

NEW SECTION. Section 5. CAUTIONARY JURY INSTRUCTION. IF THE PROSECUTION OFFERS INTO EVIDENCE A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT WAS NOT RECORDED IN VIOLATION OF [SECTION 3] AND THE COURT FINDS THAT THE PROSECUTION HAS FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT ONE OF THE EXCEPTIONS IN [SECTION 4] APPLIES, THE JUDGE SHALL, UPON REQUEST OF THE DEFENDANT, PROVIDE THE JURY WITH A CAUTIONARY INSTRUCTION NOTING THE REQUIREMENTS OF [SECTION 3] AND THE RELIABILITY OF THE STATEMENT SOUGHT TO BE INTRODUCED COMPARED TO A STATEMENT THAT IS ELECTRONICALLY RECORDED IN COMPLIANCE WITH [SECTION 3].

NEW SECTION. Section 6. Handling and preservation of electronic recordings. (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 7 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 7 6].

~~NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.~~

- END -

HOUSE BILL NO. 534

INTRODUCED BY CAMPBELL, FRENCH, HAMILTON, MCCHESENEY, SANDS, WILMER, LASLOVICH,
SHOCKLEY, WINDY BOY, HAMLETT, JENT, STEWART-PEREGOY

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS IN FELONY CASES AND IN YOUTH COURT CASES INVOLVING AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT;~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The legislature intends to require the electronic recording of custodial interrogations in felony cases based on the finding that properly recorded interrogations:

- (1) provide the best evidence of the communications that occurred during an interrogation;
- (2) prevent disputes about a ~~law enforcement~~ PEACE officer's conduct or treatment of a suspect during the course of an interrogation;
- (3) prevent a defendant from lying about the account of events originally provided to law enforcement by the defendant;
- (4) spare judges and jurors the time necessary and the need to assess which account of an interrogation to believe; ~~and~~
- (5) enhance public confidence in the criminal process; AND
- (6) HAVE BEEN ENCOURAGED BY THE MONTANA SUPREME COURT IN A WRITTEN OPINION OF THAT COURT.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7 6], the following definitions apply:

- (1) "Custodial interrogation" means ~~any interrogation in a place of detention involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider the person to be in custody, beginning when a person should have been advised of the person's Miranda rights and ending when the questioning has completely finished~~ AN INTERVIEW CONDUCTED BY A PEACE OFFICER IN A PLACE OF DETENTION FOR THE PURPOSE OF INVESTIGATING A FELONY OR, IN THE CASE OF A YOUTH, AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT IF THE INTERVIEW IS REASONABLY LIKELY TO ELICIT A RESPONSE FROM THE PERSON BEING INTERVIEWED THAT MAY INCRIMINATE THE PERSON BEING

INTERVIEWED WITH REGARD TO THE COMMISSION OF AN OFFENSE.

(2) "Electronic recording" or "electronically recorded" means an audio recording, visual recording, or audiovisual recording, if available, that is an authentic, unaltered record of a custodial interrogation.

(3) "Place of detention" means a jail, police or sheriff's station, holding cell, correctional or detention facility, ~~or other place where persons are questioned~~ OFFICE, OR OTHER STRUCTURE IN THIS STATE WHERE PERSONS ARE HELD in connection with criminal charges or juvenile delinquency proceedings.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

NEW SECTION. Section 3. Recordings required. ~~All statements made by a person during a custodial interrogation relating to an offense punishable as a felony under Montana or federal law or, in the case of a youth, an offense that would be a felony if committed by an adult must be electronically recorded. EXCEPT AS PROVIDED IN [SECTION 4], ALL CUSTODIAL INTERROGATIONS MUST BE ELECTRONICALLY RECORDED. THE RECORDING MUST CONTAIN A PEACE OFFICER ADVISING THE PERSON BEING INTERVIEWED OF THE PERSON'S MIRANDA RIGHTS, A RECORDING OF THE INTERVIEW, AND A CONCLUSION OF THE INTERVIEW.~~

~~NEW SECTION. Section 4. Presumption of inadmissibility.~~ Except as provided in [sections 5 and 6], ~~all statements made by a person during a custodial interrogation that are not electronically recorded are inadmissible as evidence against the person in any criminal or youth court proceeding brought against the person. Inadmissibility under this section is a disputable presumption and may be controverted as provided in [section 5].~~

~~NEW SECTION. Section 5. Overcoming presumption of inadmissibility.~~ The presumption of inadmissibility of statements provided in [section 4] may be overcome and statements that were not electronically recorded may be admitted into evidence in a criminal or youth court proceeding brought against the person if the court finds that:

~~(1) the statements are admissible under applicable rules of evidence;~~

~~(2) the statements are proven by a preponderance of evidence to have been made voluntarily and are reliable;~~

~~(3) it is proved by a preponderance of evidence that one or more of the following circumstances existed at the time of the custodial interrogation:~~

~~(a) the questions put forth by law enforcement personnel and the person's responsive statements were~~

part of the routine processing or booking of the person;

——— (b) before or during a custodial interrogation, after having consulted with the person's lawyer, the person unambiguously declared on videotape that the person would only respond to the law enforcement officer's questions if the person's statements were not electronically recorded;

——— (c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not feasible; or

——— (d) exigent circumstances existed that prevented the making of or rendered it not feasible to make an electronic recording of the custodial interrogation.

——— NEW SECTION. Section 4. Exceptions to recording requirement. [Sections 1 through 7] do not preclude the admission of any of the following:

——— (1) a statement made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;

——— (2) a spontaneous statement that is not made in response to a question;

——— (3) a statement made during a custodial interrogation that is conducted in another state by law enforcement officers of that state in compliance with the law of that jurisdiction. A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT WAS NOT RECORDED AS REQUIRED IN [SECTION 3] IS ADMISSIBLE IF THE COURT FINDS THAT:

——— (1) THE STATEMENT WAS MADE DURING ROUTINE PROCESSING OR BOOKING OF THE PERSON OR DURING ROUTINE BORDER INQUIRIES;

——— (2) THE STATEMENT WAS MADE BY THE ACCUSED IN OPEN COURT DURING TRIAL, BEFORE A GRAND JURY, OR AT A PRELIMINARY HEARING;

——— (3) THE STATEMENT WAS A SPONTANEOUS STATEMENT THAT WAS NOT MADE IN RESPONSE TO A QUESTION;

——— (4) THE STATEMENT WAS MADE DURING A CUSTODIAL INTERROGATION THAT WAS CONDUCTED IN ANOTHER STATE BY PEACE OFFICERS OF THAT STATE IN COMPLIANCE WITH THE LAWS OF THAT STATE;

——— (5) AFTER HAVING CONSULTED WITH THE PERSON'S LAWYER OR AFTER THE PERSON HAS WAIVED THE PERSON'S RIGHT TO HAVE AN ATTORNEY PRESENT DURING THE CUSTODIAL INTERROGATION, THE PERSON AGREED TO PARTICIPATE IN THE CUSTODIAL INTERROGATION WITHOUT AN ELECTRONIC RECORDING BEING MADE AND, IF FEASIBLE, THE PERSON'S AGREEMENT WAS ELECTRONICALLY RECORDED BEFORE THE CUSTODIAL INTERROGATION BEGAN; OR

——— (6) THE PEACE OFFICER IN GOOD FAITH FAILED TO MAKE AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION BECAUSE THE OFFICER INADVERTENTLY FAILED TO OPERATE THE RECORDING EQUIPMENT PROPERLY OR;

~~WITHOUT THE OFFICER'S KNOWLEDGE, THE RECORDING EQUIPMENT MALFUNCTIONED OR STOPPED OPERATING.~~

NEW SECTION. SECTION 4. EXCEPTIONS TO CUSTODIAL RECORDING REQUIREMENTS. A JUDGE SHALL ADMIT STATEMENTS OR EVIDENCE OF STATEMENTS THAT DO NOT CONFORM TO [SECTION 3] IF, AT HEARING, THE STATE PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT:

- (1) THE STATEMENTS HAVE BEEN MADE VOLUNTARILY AND ARE RELIABLE; OR
- (2) ONE OR MORE OF THE FOLLOWING CIRCUMSTANCES EXISTED AT THE TIME OF THE CUSTODIAL INTERROGATION:
 - (A) THE QUESTIONS PUT FORTH BY LAW ENFORCEMENT PERSONNEL AND THE PERSON'S RESPONSIVE STATEMENTS WERE PART OF THE ROUTINE PROCESSING OR BOOKING OF THE PERSON;
 - (B) BEFORE OR DURING A CUSTODIAL INTERROGATION, THE PERSON UNAMBIGUOUSLY DECLARED THAT THE PERSON WOULD RESPOND TO THE LAW ENFORCEMENT OFFICER'S QUESTIONS ONLY IF THE PERSON'S STATEMENTS WERE NOT ELECTRONICALLY RECORDED;
 - (C) THE FAILURE TO ELECTRONICALLY RECORD AN INTERROGATION IN ITS ENTIRETY WAS THE RESULT OF UNFORESEEABLE EQUIPMENT FAILURE AND OBTAINING REPLACEMENT EQUIPMENT WAS NOT PRACTICABLE;
 - (D) EXIGENT CIRCUMSTANCES PREVENTED THE MAKING OF AN ELECTRONIC RECORDING OF THE CUSTODIAL INTERROGATION;
 - (E) THE PERSON'S STATEMENTS WERE SURREPTITIOUSLY RECORDED BY OR UNDER THE DIRECTION OF LAW ENFORCEMENT PERSONNEL;
 - (F) THE PERSON'S STATEMENT WAS MADE DURING A CUSTODIAL INTERROGATION THAT WAS CONDUCTED IN ANOTHER STATE BY PEACE OFFICERS OF THAT STATE IN COMPLIANCE WITH THE LAWS OF THAT STATE; OR
 - (G) THE PERSON'S STATEMENT WAS MADE SPONTANEOUSLY AND NOT IN RESPONSE TO A QUESTION.

NEW SECTION. SECTION 5. CAUTIONARY JURY INSTRUCTION. ~~IF THE PROSECUTION OFFERS INTO EVIDENCE A STATEMENT MADE DURING A CUSTODIAL INTERROGATION THAT WAS NOT RECORDED IN VIOLATION OF [SECTION 3] AND THE COURT FINDS THAT THE PROSECUTION HAS FAILED TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT ONE OF THE EXCEPTIONS IN [SECTION 4] APPLIES, THE JUDGE SHALL, UPON REQUEST OF THE DEFENDANT, PROVIDE THE JURY WITH A CAUTIONARY INSTRUCTION NOTING THE REQUIREMENTS OF [SECTION 3] AND THE RELIABILITY OF THE STATEMENT SOUGHT TO BE INTRODUCED COMPARED TO A STATEMENT THAT IS ELECTRONICALLY RECORDED IN COMPLIANCE WITH [SECTION 3]. IF THE DEFENDANT OBJECTS TO THE INTRODUCTION OF EVIDENCE UNDER [SECTION 3] AND THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE STATEMENTS ARE ADMISSIBLE, THE JUDGE SHALL, UPON MOTION OF~~

THE DEFENDANT, PROVIDE THE JURY WITH A CAUTIONARY INSTRUCTION.

NEW SECTION. **Section 6. Handling and preservation of electronic recordings.** (1) An electronic recording of a custodial interrogation must be clearly identified and catalogued by law enforcement personnel.

(2) If a criminal or youth court proceeding is brought against a person who was the subject of an electronically recorded custodial interrogation, the electronic recording must be preserved by law enforcement personnel until all appeals and all postconviction and habeas corpus proceedings are final and concluded or until the time within which the proceedings must be brought has expired.

(3) Upon motion by the defendant, the court may order that a copy of the electronic recording be preserved for any period beyond the expiration of all appeals.

(4) If a criminal or youth court proceeding is not brought against a person who has been the subject of an electronically recorded custodial interrogation, the related electronic recording must be preserved by law enforcement personnel until all applicable state and federal statutes of limitations bar prosecution of the person.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 7 6] are intended to be codified as an integral part of Title 46, chapter 4, and the provisions of Title 46 apply to [sections 1 through 7 6].

~~NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.~~

- END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill # HB0534

Title: Require audio-video recording of custodial interrogations

Primary Sponsor: Campbell, Margaret H

Status: As Introduced

- | | | |
|---|--|--|
| ☐ Significant Local Gov Impact | ☐ Needs to be included in HB 2 | ☐ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts | ☐ Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact:

This bill would require the Department of Corrections to record and transcribe all custodial interrogations which could result in a general fund impact.

FISCAL ANALYSIS

Assumptions:

Department of Corrections

1. This bill will have a fiscal impact to the Department of Corrections because it would require the department to record and transcribe all custodial interrogations.
2. The department had 54 major cases in FY 2008.
3. Transcription will be required by all county attorneys.
4. On average, it will take 18-20 hours to transcribe each case.
5. It is unknown if the department can cover this without additional resources. If the department is unable to cover the additional workload, it is estimated that the department would need 0.50 FTE with an approximate cost of \$17,000 per year in wages and benefits.
6. The Department of Corrections currently has the necessary equipment to electronically record statements made during an interrogation.

Sponsor's Initials

Date

Budget Director's Initials

Date

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Ron Stoker, on February 20, 2009 at
8:00 A.M., in Room 137 Capitol

ROLL CALL

Members Present:

Rep. Ron Stoker, Chairman (R)
Rep. Deborah Kottel, Vice Chairman (D)
Rep. Ken Peterson, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Gerald Bennett (R)
Rep. Anders Blewett (D)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. David Howard (R)
Rep. Krayton Kerns (R)
Rep. Margaret MacDonald (D)
Rep. Edith (Edie) McClafferty (D)
Rep. Mike Menahan (D)
Rep. Michael More (R)
Rep. Keith Regier (R)
Rep. Diane Sands (D)
Rep. Wendy Warburton (R)

Members Excused: Rep. Bob Wagner (R)

Members Absent: None

Staff Present: Jennifer Eck, Committee Secretary
David Niss, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: None

Executive Action: HB 362; HB 517; HB 503; HB 504;
HB 347; HB 534; HB 552; HB 554;
HB 574; HB 628; HB 457

EXECUTIVE ACTION ON HB 628

00:02:14 Chairman Stoker

00:02:30 **Motion/Vote:** Rep. Peterson moved that **HB 628 DO PASS.**
Motion carried unanimously by voice vote. Rep. Wagner
voted by proxy.

EXECUTIVE ACTION ON HB 347

00:03:14 **Motion:** Rep. Peterson moved that **HB 347 BE TABLED.**

00:03:23 Chairman Stoker

00:03:27 **Vote:** Motion carried unanimously by voice vote. Rep.
Wagner voted by proxy.

EXECUTIVE ACTION ON HB 503

00:04:04 Chairman Stoker

00:04:07 **Motion:** Rep. Peterson moved that **HB 503 DO PASS.**

00:04:13 Chairman Stoker

00:04:25 Rep. Sands called the question.

00:04:40 Chairman Stoker

00:05:52 **Vote:** Motion failed 2-16 by roll call vote with Rep.
Driscoll and Rep. More voting aye. Rep. Wagner voted
by proxy.

00:07:04 **Motion/Vote:** Rep. Sands moved that **HB 503 BE TABLED**
AND THE VOTE REVERSED. Motion carried unanimously by
voice vote. Rep. Wagner voted by proxy.

EXECUTIVE ACTION ON HB 504

00:07:27 **Motion:** Rep. Peterson moved that **HB 504 DO PASS.**

00:07:32 Chairman Stoker

00:07:45 Rep. Driscoll called the question.

00:07:52 **Vote:** Motion carried 10-8 by roll call vote with Rep.
Kerns, Rep. Bennett, Rep. More, Rep. Wagner, Rep.
Regier, Rep. Howard, Rep. Warburton, and Rep. Stoker
voting no. Rep. Wagner voted by proxy.

00:09:18 Chairman Stoker

EXECUTIVE ACTION ON HB 552

00:09:41 **Motion:** Rep. Peterson moved that **HB 552 DO PASS.**

Discussion:

00:09:49 Chairman Stoker

00:10:22 Rep. Peterson

00:11:43 Rep. Ebinger

00:11:56 Rep. Peterson called the question.

00:12:10 **Vote:** Motion failed 1-17 by roll call vote with Rep. Blewett voting aye. Rep. Wagner voted by proxy.

00:13:54 **Motion/Vote:** Rep. Sands moved that **HB 552 BE TABLED AND THE VOTE REVERSED.** Motion carried unanimously by voice vote. Rep. Wagner voted by proxy.

EXECUTIVE ACTION ON HB 554

00:14:16 **Motion:** Rep. Peterson moved that **HB 554 DO PASS.**

00:14:23 Mr Niss

EXHIBIT(juh40a01)

00:14:26 Chairman Stoker

00:15:01 **Motion:** Rep. Howard moved that **HB 554 BE AMENDED** (refer to Exhibit 1).

Discussion:

00:15:20 Chairman Stoker

00:15:26 Rep. Howard

00:15:35 Rep. Wagner joined the meeting.

00:16:06 Chairman Stoker

00:16:09 **Vote:** Motion that **HB 554 BE AMENDED** carried unanimously by voice vote.

00:16:17 **Motion:** Rep. Peterson moved that **HB 554 DO PASS AS AMENDED.**

Discussion:

00:16:24 Chairman Stoker

00:16:27 Rep. Regier

00:16:46 Rep. Howard

00:17:28 Rep. Kottel

00:20:24 Rep. More
00:21:43 Rep. Howard
00:24:15 Rep. Peterson
00:24:48 Rep. Howard
00:26:38 Chairman Stoker
00:26:46 Rep. Ebinger
00:27:06 Rep. Howard
00:27:14 Rep. MacDonald
00:28:08 Rep. Menahan
00:30:22 Rep. Wagner
00:31:30 Rep. Howard called the question.

00:31:36 **Vote:** Motion that **HB 554 DO PASS AS AMENDED** failed 7-11 by roll call vote with Rep. Peterson, Rep. Kerns, Rep. Bennett, Rep. More, Rep. Regier, Rep. Howard, and Rep. Stoker voting aye.

00:32:36 **Motion/Vote:** Rep. Sands moved that **HB 554 BE TABLED AND THE VOTE REVERSED**. Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON HB 574

00:33:05 **Motion:** Rep. Peterson moved that **HB 574 DO PASS**.

00:33:06 Mr. Niss

00:33:50 Chairman Stoker decided to postpone Executive Action on HB 574 until the end of the meeting.

EXECUTIVE ACTION ON HB 362

00:34:17 **Motion:** Rep. Peterson moved that **HB 362 DO PASS**.

00:34:21 Mr. Niss

EXHIBIT(juh40a02)

00:34:22 Chairman Stoker

00:34:36 **Motion:** Rep. Becker moved that **HB 362 BE AMENDED** (refer to Exhibit 2).

00:34:43 Chairman Stoker

00:35:41 Rep. Becker

00:35:44 Mr. Niss

00:40:49 Chairman Stoker

00:40:58 Mr. Niss

00:41:01 Chairman Stoker

00:41:08 Mr. Niss

00:41:15 Rep. Becker

00:41:22 Mr. Niss

00:41:25 Chairman Stoker
00:41:34 Mr. Niss
00:43:45 Chairman Stoker
00:43:55 Rep. Becker called the question.

00:43:57 **Vote:** Motion that **HB 362 BE AMENDED** carried 16-2 by voice vote with Rep. Peterson and Rep. Stoker voting no.

00:44:25 **Motion:** Rep. Peterson moved that **HB 362 DO PASS AS AMENDED.**

Discussion:

00:44:33 Chairman Stoker
00:44:35 Rep. Regier
00:44:40 Rep. Wagner exited the meeting.
00:45:07 Chairman Stoker
00:45:18 Rep. Kottel
00:45:24 Mr. Niss
00:48:04 Rep. Becker
00:50:13 Rep. Peterson
00:52:43 Rep. MacDonald
00:53:45 Rep. Regier
00:54:34 Rep. Sands called the question.
00:54:39 Chairman Stoker

00:55:19 **Vote:** Motion failed 8-10 by roll call vote with Rep. Kottel, Rep. Sands, Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. Regier, Rep. McClafferty voting aye. Rep. Wagner voted by proxy.

00:56:11 **Motion/Vote:** Rep. Sands moved that **HB 362 BE TABLED AND THE VOTE REVERSED.** Motion carried 16-2 by voice vote with Rep. Becker and Rep. Ebinger voting no. Rep. Wagner voted by proxy.

00:57:14 Chairman Stoker
00:57:28 Recess
01:16:16 Reconvene. Rep. Wagner rejoined meeting.

EXECUTIVE ACTION ON HB 517

01:16:17 Chairman Stoker

01:16:34 **Motion:** Rep. Peterson moved that **HB 517 DO PASS.**

01:16:44 Chairman Stoker

01:16:52 **Motion:** Rep. Kottel moved that **HB 517 BE AMENDED**
(refer to Exhibit 3).

EXHIBIT(juh40a03)

Discussion:

01:17:27 Chairman Stoker
01:17:35 Rep. Kottel
01:19:28 Rep. Peterson called the question.
01:19:37 Chairman Stoker
01:20:24 Rep. Kottel
01:20:40 Chairman Stoker
01:20:48 Rep. Regier
01:20:59 Rep. Kottel
01:21:00 Rep. Regier
01:21:10 Rep. Kottel

01:22:12 **Vote:** Motion that **HB 517 BE AMENDED** carried 17-1 by
voice vote with Rep. More voting no.

01:22:33 **Motion:** Rep. Kottel moved that **HB 517 DO PASS AS**
AMENDED.

01:22:41 Chairman Stoker

01:22:41 **Motion:** Rep. Kottel moved that **HB 517 BE AMENDED**
(refer to Exhibit 4).

EXHIBIT(juh40a04)

Discussion:

01:22:47 Chairman Stoker
01:22:55 Rep. Kottel
01:24:38 Chairman Stoker
01:24:59 Rep. Kottel
01:25:01 Chairman Stoker
01:25:05 Rep. Kottel
01:25:39 Rep. Peterson
01:26:37 Chairman Stoker
01:26:41 Rep. Regier
01:27:12 Chairman Stoker
01:27:16 Rep. Kottel
01:29:05 Rep. MacDonald
01:30:16 Rep. Blewett
01:31:01 Rep. Peterson
01:31:32 Rep. McClafferty
01:31:59 Rep. Becker
01:32:23 Chairman Stoker
01:32:30 Rep. Kottel

01:33:49 Rep. Regier
 01:34:21 Chairman Stoker
 01:34:32 Rep. Kottel
 01:35:22 Rep. Peterson called the question.

 01:35:28 **Vote:** Motion that **HB 517 BE AMENDED** carried 15-3 by roll call vote with Rep. MacDonald, Rep. Becker, and Rep. Regier voting no.

 01:36:24 **Motion:** Rep. Peterson moved that **HB 517 DO PASS AS AMENDED.**

Discussion:

01:36:49 Rep. More
 01:37:43 Rep. Blewett
 01:38:19 Rep. Peterson called the question.

 01:38:23 **Vote:** Motion carried 14-4 by roll call vote with Rep. Kerns, Rep. Bennett, Rep. More, and Rep. Wagner voting no.

EXECUTIVE ACTION ON HB 534

01:39:21 Chairman Stoker
 01:39:29 Mr. Niss
EXHIBIT(juh40a05)
 01:40:57 Chairman Stoker

 01:41:00 **Motion:** Rep. Peterson moved that **HB 534 DO PASS.**

 01:41:03 Chairman Stoker

 01:41:12 **Motion:** Rep. Menahan moved that **HB 534 BE AMENDED** (refer to Exhibit 5).

Discussion:

01:41:20 Chairman Stoker
 01:41:27 Rep. Menahan
 01:50:07 Chairman Stoker
 01:50:10 Rep. Peterson
 01:51:24 Rep. Menahan
 01:51:58 Rep. Peterson
 01:52:15 Rep. Bennett
 01:52:56 Rep. Menahan
 01:53:23 Rep. Howard
 01:55:40 Rep. Kottel called the question.

01:55:46 **Vote:** Motion that **HB 534 BE AMENDED** carried unanimously by roll call vote.

01:56:34 **Motion:** Rep. Peterson moved that **HB 534 DO PASS AS AMENDED.**

Discussion:

01:56:40 Chairman Stoker
 01:56:44 Rep. Howard
 01:59:26 Rep. Ebinger
 01:59:58 Rep. Menahan
 02:01:40 Rep. Kottel
 02:03:37 Chairman Stoker
 02:03:43 Rep. Peterson called the question.

02:03:45 **Vote:** Motion carried 14-4 by roll call vote with Rep. Kerns, Rep. Regier, Rep. Howard, and Rep. Stoker voting no.

EXECUTIVE ACTION ON HB 574

02:04:49 Mr. Niss
 02:04:55 Chairman Stoker

02:04:58 **Motion:** Rep. Peterson moved that **HB 574 DO PASS.**

02:05:10 **Motion:** Rep. Menahan moved that **HB 574 BE AMENDED** (refer to Exhibit 6).

EXHIBIT (juh40a06)

Discussion:

02:05:32 Chairman Stoker
 02:05:36 Rep. Menahan
 02:05:45 Rep. Wagner exited the meeting.
 02:07:43 Rep. Sands
 02:08:02 Chairman Stoker
 02:08:03 Rep. Menahan
 02:09:01 Chairman Stoker
 02:09:10 Mr. Niss
 02:14:04 Chairman Stoker
 02:14:57 Mr. Niss
 02:15:01 Rep. More
 02:15:18 Mr. Niss
 02:15:21 Rep. Menahan
 02:15:33 Mr. Niss
 02:15:34 Rep. Menahan
 02:15:46 Chairman Stoker

02:15:52 Rep. Peterson called the question.
02:15:56 Chairman Stoker

02:16:01 **Vote:** Motion that **HB 574 BE AMENDED** carried 17-1 by voice vote with Rep. Wagner voting no. Rep. Wagner voted by proxy.

02:16:34 **Motion:** Rep. Peterson moved that **HB 574 DO PASS AS AMENDED.**

02:16:45 Chairman Stoker
02:16:54 Rep. Peterson called the question.

02:16:55 **Vote:** Motion carried 17-1 by voice vote with Rep. Wagner voting no. Rep. Wagner voted by proxy.

02:17:28 Chairman Stoker

EXECUTIVE ACTION ON HB 457

02:17:29 **Motion:** Rep. Kottel made a motion that **HB 457 BE TAKEN FROM THE TABLE.**

02:18:06 Chairman Stoker

02:18:49 **Vote:** Motion that HB 457 carried 9-8 by roll call vote with Rep. Peterson, Rep. Kerns, Rep. Bennett, Rep. More, Rep. Regier, Rep. Howard, Rep. Warburton, and Rep. Stoker voting no.

02:20:18 Chairman Stoker

02:20:22 **Motion:** Rep. Kottel moved that **HB 457 BE AMENDED** (refer to Exhibit 7).

EXHIBIT (juh40a07)

Discussion:

02:20:49 Chairman Stoker
02:20:55 Rep. Wagner rejoined the meeting.
02:20:56 Rep. Kottel
02:21:59 Rep. More
02:22:28 Chairman Stoker
02:22:33 Rep. Kottel
02:23:21 Chairman Stoker
02:24:18 Rep. Peterson
02:24:48 Rep. Kottel
02:25:45 Rep. Sands
02:26:00 Rep. Kottel

02:26:04 Rep. Menahan
02:26:55 Chairman Stoker
02:26:59 Rep. Peterson called the question.

02:27:06 **Vote:** Motion that **HB 457 BE AMENDED** carried 10-8 by roll call vote with Rep. Peterson, Rep. Kerns, Rep. More, Rep. Wagner, Rep. Regier, Rep. Howard, Rep. Warburton, and Rep. Stoker voting no.

02:28:20 **Motion:** Rep. Kottel moved that **HB 457 DO PASS AS AMENDED.**

Discussion:

02:28:29 Rep. Peterson
02:29:33 Rep. Sands
02:30:15 Rep. Menahan
02:31:05 Rep. Kottel
02:32:15 Rep. Peterson called the question.

02:32:19 **Vote:** Motion failed 9-9 by roll call vote with Rep. Kottel, Rep. Sands, Rep. MacDonald, Rep. Ebinger, Rep. Becker, Rep. Driscoll, Rep. McClafferty, Rep. Blewett, and Rep. Menahan voting aye.

02:33:04 Chairman Stoker
02:33:18 Rep. Sands
02:33:29 Chairman Stoker
02:33:50 Rep. Ebinger

ADJOURNMENT

02:34:30 Adjournment

Jennifer Eck, Secretary

je

Additional Documents:

EXHIBIT ([juh40aad.pdf](#))

Amendments to House Bill No. 534
1st Reading Copy

Requested by Representative Mike Menahan

For the House Judiciary Committee

Prepared by David Niss
February 20, 2009 (8:00am)

1. Title, line 6.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 13.

Strike: "law enforcement"

Insert: "peace"

3. Page 1, line 18.

Strike: "and"

4. Page 1, line 19.

Following: "process"

Insert: "; and"

(6) have been encouraged by the Montana supreme court in a written opinion of that court"

5. Page 1, line 21.

Strike: "7"

Insert: "6"

6. Page 1, lines 23 through 26.

Following: "means" on line 23

Strike: remainder of line 23 through "finished" on line 26

Insert: "an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense"

7. Page 1, line 30.

Strike: "or other place where persons are questioned"

Insert: "office, or other structure in this state where persons are held"

8. Page 2, line 4 through line 6.

Following: "required."

Strike: remainder of line 4 through "recorded." on line 6

Insert: "Except as provided in [section 4], all custodial

interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview."

9. Page 2, line 8 through page 3, line 1.

Strike: sections 4 and 5 in their entirety

Renumber: subsequent sections

10. Page 3, line 3.

Following: "Exceptions"

Insert: "to recording requirement"

11. Page 3, lines 3 through 9.

Following: "the third "."

Strike: the remainder of line 3 through "jurisdiction." on line 9

Insert: "A statement made during a custodial interrogation that was not recorded as required in [section 3] is admissible if the court finds that:

(1) the statement was made during routine processing or booking of the person or during routine border inquiries;

(2) the statement was made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;

(3) the statement was a spontaneous statement that was not made in response to a question;

(4) the statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state;

(5) after having consulted with the person's lawyer or after the person has waived the person's right to have an attorney present during the custodial interrogation, the person agreed to participate in the custodial interrogation without an electronic recording being made and, if feasible, the person's agreement was electronically recorded before the custodial interrogation began; or

(6) the peace officer in good faith failed to make an electronic recording of the custodial interrogation because the officer inadvertently failed to operate the recording equipment properly or, without the officer's knowledge, the recording equipment malfunctioned or stopped operating."

12. Page 3.

Following: line 9

Insert: "Insert: NEW SECTION. Section 5. Cautionary jury instruction. If the prosecution offers into evidence a statement made during a custodial interrogation that was not recorded in violation of [section 3] and the court finds

that the prosecution has failed to establish by a preponderance of the evidence that one of the exceptions in [section 4] applies, the judge shall, upon request of the defendant, provide the jury with a cautionary instruction noting the requirements of [section 3] and the reliability of the statement sought to be introduced compared to a statement that is electronically recorded in compliance with [section 3]."

Renumber: subsequent sections

13. Page 3, line 23.

Strike: "7"

Insert: "6"

14. Page 3, line 24.

Strike: "7"

Insert: "6"

15. Page 3, line 26.

Strike: section 9 in its entirety

- END -

Amendments to House Bill No. 534
1st Reading Copy

Requested by Representative Mike Menahan

For the House Judiciary Committee

Prepared by David Niss
February 20, 2009 (8:00am)

1. Title, line 6.

Strike: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 13.

Strike: "law enforcement"

Insert: "peace"

3. Page 1, line 18.

Strike: "and"

4. Page 1, line 19.

Following: "process"

Insert: "; and"

(6) have been encouraged by the Montana supreme court in a written opinion of that court"

5. Page 1, line 21.

Strike: "7"

Insert: "6"

6. Page 1, lines 23 through 26.

Following: "means" on line 23

Strike: remainder of line 23 through "finished" on line 26

Insert: "an interview conducted by a peace officer in a place of detention for the purpose of investigating a felony if the interview is reasonably likely to elicit a response from the person being interviewed that may incriminate the person being interviewed with regard to the commission of an offense"

7. Page 1, line 30.

Strike: "or other place where persons are questioned"

Insert: "office, or other structure in this state where persons are held"

8. Page 2, line 4 through line 6.

Following: "required."

Strike: remainder of line 4 through "recorded." on line 6

Insert: "Except as provided in [section 4], all custodial

interrogations must be electronically recorded. The recording must contain a peace officer advising the person being interviewed of the person's Miranda rights, a recording of the interview, and a conclusion of the interview."

9. Page 2, line 8 through page 3, line 1.
Strike: sections 4 and 5 in their entirety
Renumber: subsequent sections

10. Page 3, line 3.
Following: "Exceptions"
Insert: "to recording requirement"

11. Page 3, lines 3 through 9.
Following: "the third "."
Strike: the remainder of line 3 through "jurisdiction." on line 9
Insert: "A statement made during a custodial interrogation that was not recorded as required in [section 3] is admissible if the court finds that:
 (1) the statement was made during routine processing or booking of the person or during routine border inquiries;
 (2) the statement was made by the accused in open court during trial, before a grand jury, or at a preliminary hearing;
 (3) the statement was a spontaneous statement that was not made in response to a question;
 (4) the statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state;
 (5) after having consulted with the person's lawyer or after the person has waived the person's right to have an attorney present during the custodial interrogation, the person agreed to participate in the custodial interrogation without an electronic recording being made and, if feasible, the person's agreement was electronically recorded before the custodial interrogation began; or
 (6) the peace officer in good faith failed to make an electronic recording of the custodial interrogation because the officer inadvertently failed to operate the recording equipment properly or, without the officer's knowledge, the recording equipment malfunctioned or stopped operating."

12. Page 3.
Following: line 9
Insert: "Insert: "NEW SECTION. Section 5. Cautionary jury instruction. If the prosecution offers into evidence a statement made during a custodial interrogation that was not recorded in violation of [section 3] and the court finds

that the prosecution has failed to establish by a preponderance of the evidence that one of the exceptions in [section 4] applies, the judge shall, upon request of the defendant, provide the jury with a cautionary instruction noting the requirements of [section 3] and the reliability of the statement sought to be introduced compared to a statement that is electronically recorded in compliance with [section 3]."

Renumber: subsequent sections

13. Page 3, line 23.

Strike: "7"

Insert: "6"

14. Page 3, line 24.

Strike: "7"

Insert: "6"

15. Page 3, line 26.

Strike: section 9 in its entirety

- END -

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Gary L. Perry, on March 19, 2009 at 9:00
A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Jim Shockley, Vice Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Larry Jent (D)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 534, HB 362, 3/12/2009

Executive Action:

HEARING ON HB 362

Opening Statement by Sponsor:

00:02:23 Rep. Teresa Henry (D), HD 96, opened the hearing on HB 362, Limit liability for practice of disaster medicine.

Proponents' Testimony:

00:06:54 Dr. Richard Deichmann, Chairman of Medicine, Memorial Medical Center, New Orleans (by audio conference call)

[EXHIBIT\(jus61a01\)](#)

[EXHIBIT\(jus61a02\)](#)

00:11:43 Dr. Gwen Jonas, Chief of Staff; Chairman of Ethics Committee, Kalispell Regional Medical Center, Kalispell

[EXHIBIT\(jus61a03\)](#)

00:15:36 Steven Zwisler, Registered Nurse; Chairman, Joint Kalispell Regional Medical Center/North Valley Hospital Mass Casualty Planning Committee, Whitefish

[EXHIBIT\(jus61a04\)](#)

00:17:24 Dr. Brendt Pistorese, Critical Care Physician, Kalispell Regional Medical Center, Kalispell

00:22:08 Maura Fields, Registered Nurse; Chief Clinical Officer, North Valley Hospital, Whitefish

[EXHIBIT\(jus61a05\)](#)

00:24:13 Patrick Montalban, Trustee, Northern Rockies Medical Center

00:24:43 Bob Olson, Montana Hospital Association (MHA)

00:29:34 Erin MacLean, Montana Medical Association

[EXHIBIT\(jus61a06\)](#)

00:32:14 Robert Allen, Executive Director, Montana Nurses Association (MNA)

00:33:33 Aimee Gmoljez, Billings Clinic; St. Peters Hospital, Helena; Bozeman Deaconess Hospital, Bozeman

00:34:14 Doug Neil, Montana State Fireman Association

00:38:11 Rep. Henry for Clayton Berger

[EXHIBIT\(jus61a07\)](#)

Distributed to the Committee Members after Proponents Testimony:

[EXHIBIT\(jus61a08\)](#)

[EXHIBIT\(jus61a09\)](#)

Opponents' Testimony:

None

Informational Testimony:

00:39:44 Al Smith, Montana Trial Lawyers Association (MTLA)

Questions from Committee Members and Responses:

00:43:41 Sen. McGee
00:44:14 Rep. Henry
00:47:36 Sen. Laslovich
00:48:24 Mr. Zwisler
00:50:57 Sen. Laslovich
00:51:05 Rep. Henry
00:51:05 Dr. Jonas
00:51:25 Rep. Henry
01:02:30 Sen. Laslovich
01:03:41 Mr. Smith
01:06:10 Sen. Juneau
01:07:31 Rep. Henry
01:10:01 Sen. Juneau
01:10:10 Mr. Smith

Closing by Sponsor:

01:11:58 Rep. Henry
[EXHIBIT\(jus61a10\)](#)

01:13:20 break

HEARING ON HB 534

Opening Statement by Sponsor:

01:23:34 Rep. Margaret Campbell (D), HD 31, opened the hearing on HB 534, Require audio-video recording of custodial interrogations.

Proponents' Testimony:

01:28:41 Jessie McQuillan, Executive Director, Montana Innocence Project
[EXHIBIT\(jus61a11\)](#)
01:34:00 Bill Hooks, Attorney; Montana Association of Defense Trial Lawyers
01:38:01 Jim Smith, Montana Sheriffs and Peace Officers Association; Montana County Attorneys Association
01:41:53 Pam Bucy, Montana Association of Chiefs of Police; Montana Police Protective Association

01:44:23 Doug Lowney, Montanans for Justice; also for Beth
Brenneman, Disability Rights Montana

EXHIBIT(jus61a12)

01:50:10 Mike Batista, Criminal Investigations Division,
Department of Justice

01:51:25 James Shuler, Attorney, retired judge

Opponents' Testimony:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

01:54:18 Sen. McGee
01:54:47 Rep. Campbell
01:55:00 Sen. McGee
01:55:12 Mr. Batista
01:56:18 Sen. McGee
01:56:47 Mr. Smith
01:59:09 Sen. McGee
01:59:13 Mr. Batista
01:59:26 Sen. McGee
01:59:45 Ms. Bucy
02:01:54 Sen. Juneau
02:03:12 Mr. Smith
02:07:46 Sen. McGee
02:08:44 Mr. Shuler
02:11:21 Sen. McGee
02:11:29 Rep. Campbell
02:13:45 Sen. Juneau
02:15:08 Rep. Campbell
02:15:55 Sen. Shockley
02:16:36 Mr. Batista
02:17:50 Sen. Shockley
02:18:34 Ms. Bucy
02:20:48 Sen. Shockley
02:20:57 Mr. Hooks
02:22:38 Sen. Shockley
02:22:54 Ms. Bucy
02:26:07 Sen. Shockley
02:26:30 Mr. Batista
02:26:46 Sen. Juneau
02:27:17 Rep. Campbell

Closing by Sponsor:

02:27:39 Rep. Campbell

ADJOURNMENT

Adjournment: 11:28 A.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT ([jus61aad.pdf](#))



SENATE JUDICIARY
EXHIBIT NO. 11
DATE 3/19/09
BILL NO. HB 534

P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

Re: HB 534, Recording of Felony Custodial Interrogations

Before the Montana Senate Judiciary Committee, March 19, 2009

Written Testimony of Jessie McQuillan,
Executive Director of Montana Innocence Project

Summary of Testimony

- Montana Innocence Project worked with the Montana Department of Justice & other groups representing law enforcement professionals to craft a solid proposal that addresses concerns raised by law enforcement. It provides several major exceptions to the requirement to record felony custodial interrogations to accommodate situations where recordings can't be made.
- A number of Montana law enforcement departments have already begun recording interrogations & report positive experiences (See List In Packet). Several states around the nation have recently adopted laws similar to HB 534.
- **Requiring the recording of interrogations helps to:**
 - 1) **EXONERATE THE INNOCENT:** Forensic DNA testing has proven the innocence of 232 Americans who were wrongly convicted of serious crimes. In 25 percent of these cases, a false confession played a role in the wrongful conviction. Recording interrogations helps to prevent this mistake by providing an independent record of confessions, and thus helps to protect innocent people and the public who may be victimized when real perpetrators aren't convicted.
 - 2) **CONVICT THE GUILTY:** When defendants & their attorneys face the recorded evidence of statements they made during an interrogation, they're less likely to contest officers' reports, and more likely to negotiate guilty pleas. Similarly, it's easier for judges & juries to quickly decide the guilt of a defendant. Montana law enforcement departments that have already adopted recording policies confirm this experience.
 - 3) **SAVE TIME & EXPENSE FOR EVERYONE:** An electronic record of an interrogation is an invaluable tool for settling disputes & preventing pre-trial motions & hearings about what statements were made & what transpired during an interrogation. This helps police, prosecutors, judges, juries, defense attorneys, court clerks by saving time, effort & expenses.



P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

FACT SHEET

THE RECORDING OF CUSTODIAL INTERROGATIONS OFFERS PROTECTIONS TO LAW ENFORCEMENT

Requiring the recordation of custodial interrogations has long been identified as a reform that shields the innocent from wrongful conviction by creating a record of the questioning that yields a confession. Discussions about the benefits of the reform, however, typically exclude protections the practice offers law enforcement.

The Crime-Solving Potential of Recording Custodial Interrogations:

- Recording interrogations capture subtle details that may be lost if unrecorded, which helps law enforcement better investigate the crime;
- Creating a record of statements made by the suspect make it difficult for a suspect to change an account of events originally provided to law enforcement;
- Generating a recording of an interrogation permits officers to concentrate on the interview, rather than being distracted by copious note-taking during the course of the interrogation; and
- The production of an electronic recording creates a permanent record of original statements provided by suspects. If a shift in the investigative focus occurs later, law enforcement can easily refer back to the recording to yield additional details which may have been initially deemed irrelevant.

Electronic Recording of Interrogations Provides Additional Benefits to Law Enforcement:

- The presence of a recording removes the potential for disputes about how an officer conducted himself or treated a suspect;
- Electronic recordings protect innocent police officers and law enforcement agencies accused of coercing confessions. In the absence of a recording, the defense has ample opportunity to offer scenarios that seem plausible to fact-finders and can result in sizable settlements; and
- The decision to record interrogations enhances public confidence in law enforcement, while reducing the number of citizen complaints against the police.

Montana Law Enforcement Agencies that Currently Create Audio and/or Visual Recordings of Custodial Interrogations

from "Departments that Currently Record Custodial Interrogations,"
Appendix A of 2004 Report: "Police Experiences Recording Interrogations," by former U.S. Attorney Tom Sullivan

Law Enforcement Agency	Population (2000 Census)	Sworn Officers	Audio/Video	Years Recording
Billings PD	89,847	128	A/V	20
Bozeman PD	27,509	42	A	18
Butte/Silverbow LED	34,606	40	A/V	10+
Cascade County SO	80,357	40	A/V	10+
Flathead County SO	74,471	45	A/V	10+
Gallatin County SO	67,831	40	A	10+
Great Falls PD	56,690	80	A/V	8
Helena PD	25,780	49	A/V	10
Kalispell PD	14,223	45	A/V	10+
Lewis & Clark County SO	55,716	40	A/V	15
Missoula PD	57,053	89	A/V	3
Missoula County SO	95,802	58	A/V	14



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FACT SHEET

RECORDING INTERROGATIONS HAS BROAD SUPPORT

From law enforcement:

"We don't object to any recordation of interviews or interrogations which would result in a clearer picture of what the defendant or the witness told the police officer. After all, it is our firm belief that in an extraordinarily overwhelming number of cases, the information being reported out of those cases is accurate and correct, and we believe that a recording would help us to prove that."

-Jim Pasco, Executive Director, Fraternal Order of Police
NPR's Tavis Smiley Show, Jan. 17, 2003

"Police and prosecutors have little to fear from a requirement to videotape all interrogations. Recording not only protects the innocent, it helps convict the guilty and sustain the public's faith in our criminal justice system."

-Amy Klobuchar, Hennepin County, MN, County Attorney
"Eye on Interrogations: How Videotaping Serves the Cause of Justice,"
Washington Post op-ed, June 10, 2002

"[I]f it's done right, there is no more powerful evidence than a videotaped confession there for the defense and the public to see."

-Capt. Barney Forsythe, director of Montgomery County (MD) major crimes division
"Md. Weighs Taping Police Interviews; Videos Dispel Questions on Tactics,"
Washington Post, Feb. 12, 2002

From judges:

"I would describe [videotaping] as a big improvement. We're spending a lot less on pre-trial motions. It just narrows the issues."

-Kankakee County, IL, Judge Clark Erickson
"No More Excuses. Go to the Tape," Chicago Tribune, editorial, Apr. 21, 2002

"A \$200 video recorder and a \$2 cassette would have saved all this time and money and the questions of whether this confession is valid would not be in this courtroom."

-U.S. District Judge Donald Graham, Florida
"Prosecutor: Hard to retry Behan case," Miami Herald, October 3, 2002

From the media:

"Illinois' criminal justice system is flawed. The 13 men who have been wrongly sentenced to die since 1977 stand as stark evidence of that. It is time to substantially improve that system, and videotaping interrogations and confessions will be an important step toward that."

-*"No more excuses. Go to the tape,"*
Chicago Tribune, April 21, 2002

"It is not all that uncommon for people to admit under intense interrogation that they committed crimes of which they were innocent. Their lawyers say the teenagers were questioned by police for up to 28 hours, and charge that the confessions were coerced. Had the entire questioning been videotaped, as Alaska and Minnesota require but New York does not, the quest for truth might be easier."

-*"Justice in the Central Park Jogger Case,"*
New York Times, October 16, 2002

"Recording what happens as cops grill a suspect is not only a protection against the bad acts of rogue officers, but also a guard against false allegations of police misconduct by criminal suspects. To ensure both of these good outcomes, New York's police department -- and others across the nation that don't do so -- should videotape all interrogations."

-*DeWayne Wickham, USA Today columnist*
"Film all police interrogations," USA Today, September 24, 2002

"While video acts to protect the rights of defendants, it also helps protect police and the prosecution from charges like coercion that sometimes sway jurors to decide against an otherwise solid case."

-*Clarence Page, syndicated columnist*
"Jogger case revelation: Tape interrogations too," Newsday, October 1, 2002

From academics:

"Taping interrogations and preventing false confessions are issues about truth and justice. They should be embraced by all who participate in or benefit from our criminal justice system."

-*Professor Steven A. Drizin, Northwestern University Law School*
"Taping confessions makes just sense," Milwaukee Journal Sentinel op-ed, May 11, 2002

From defense attorneys:

"Custodial interrogations are a legitimate law-enforcement tool used by the police to elicit what is certainly one of the most powerful pieces of evidence in a criminal case: a confession. Legislation requiring that such confessions be electronically recorded in their entirety as a predicate to admissibility at trial serves not only to improve their credibility and reliability, but also to protect those who may, for whatever reason, be in danger of giving a false confession."

-*John J. Hardiman and Michael A. DiLauro, Rhode Island Public Defender's Office*
"Videotape them; R.I. should fight false confessions," The Providence Journal op-ed, November 17, 2002



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FACT SHEET
RECORDING CUSTODIAL INTERROGATIONS:
A RANGE OF COST ALTERNATIVES

Concerns about cost are frequently raised by those who oppose requiring the recording of interrogations. However, a number of cost-effective options are available for large cities and small rural towns alike. This piece will lay out a number of cost options, from the simplest variety to state-of-the-art systems.

Audio Recording

Some jurisdictions do audio-only recording, and the necessary equipment for implementing such a policy is simply a hand-held recording device that can be purchased for as little as \$20. A digital voice recorder can be purchased for \$40-\$60. Digital recording devices allow an officer to record over 100 hours of uninterrupted audio and then transfer those files to a computer. A state-of-the-art audio recording device may be purchased for about \$300.

Because recording is only required at a fixed place of detention, departments only need to have one or two devices per police station, they do not need to have a device for each officer. The vast majority of departments already have this equipment on hand.

Storage for Digital Recordings:

- It is now possible to make and/or transfer audio and video recordings to digital format. As a result, departments will not need to buy and store cassette tapes or even DVDs, but can retain the recordings on small and inexpensive data storage devices or on computers.
- Law enforcement agencies can store 700MB of audio (roughly 80 min) on a standard CD. Using the same formula for long-term storage, agencies can store 190 hours of recorded audio on a standard 100GB hard-drive. Those hard-drives are running for \$70 on the internet right now, so the cost of storing an hour of recorded audio is \$.37 and that cost will drop as the technology becomes more efficient.
- Multiple copies of digital recordings can be made at no expense.

Video Recording

A Low-Budget Alternative:

It is possible to comply with legislation that requires the recording of interrogations at minimal cost. The figures below represent costs for one system; however, should an entire department or several at once opt to purchase such equipment, wholesale options are likely available.

The following represents a cost estimate for a system to outfit one department, offered at current retail prices:

- Single digital camcorders now retail for \$199.99;
- An individual DVD can hold approximately 4.7-gigabites, on which 2 hours of studio quality (supergrade) footage can be recorded;
- An inexpensive DVD player retails for as low as \$49.99;
- A 600-gigabyte external hard drive [used to store all of the interrogations] can cost as little as \$279.99;

(Source: <http://www.bestbuy.com>)

This ballpark figure is consistent with an estimate provided by a Special Committee on the Recordation of Custodial Interrogations submitted a report to New Jersey's Supreme Court, indicating that "**for under a thousand dollars** a video system can be installed recording onto VHS tape."

(Source: www.judiciary.state.nj.us/notices/reports/cookreport.pdf)

A Mid-Range Alternative:

Also possible is a mid-range alternative that offers a server which has the capacity to hold all archived interrogations, in addition to more recent ones.

Denver, CO, for instance, has a 25-room recordation system that contains individual work stations which receive data from the video camera and places it onto the hard drive. These interrogation videos are taken from the hard drive and burned onto a CD. The total cost for all of the video rooms and work stations was \$175,000 (at \$7,000 per room). In addition, Denver purchased an \$11,000 mainframe computer to store all of its interrogations over time. According to officials, this was less challenging than warehousing all of the individual interrogation DVD's.

State-of-the-Art Integrated Recordation System:

Some law enforcement agencies, such as the Chicago Police Department, have installed integrated systems, which allow all investigators within a particular department to view live and stored interviews. Such a system also permits investigators to embed typed notes onto already-recorded interrogations, which serves as a valuable investigative tool. In such an integrated system, all investigators can watch and retrieve interviews from all computers and from any desktop in the stationhouse. In this way, investigators can collaborate on cases and build upon the ideas and premises of others working on a case.

Such a system which integrates four different rooms with the capacity for real-time note-taking is \$40,000. However, for a one-room system that does not allow system connectivity, the cost is \$8,000. While this version is less expensive than the fully -integrated system, it still allows investigators to continually view interrogations and burn them onto CDs.

(Source: Word Systems: <http://www.wsystems.com/>)

civil rights protection & advocacy system for montana

disability rights
formerly Montana Advocacy Program **montana**

March 19, 2009

Re: HB 534 Require Audio-Video Recording of Custodial Interrogations

Dear Members of the Senate Judiciary Committee:

Disability Rights Montana supports HB 534 as it enacts one of the recommendations made by advocates to address the phenomenon of false confessions by persons with cognitive impairments caused by developmental disability, traumatic brain injury or even mental illness. This problem has been identified and doggedly tracked most prominently by Mr. Robert Perske, who in December of 2008 published accounts of 53 persons with cognitive impairments who have been exonerated of serious felonies across the United States. Most of them have occurred since 1990. This can be found at:

<http://aaidd.allenpress.com/aamronline/?request=get-document&doi=10.1352%2F2008.46:468-479>.

Mr. Perske identifies that this problem is the result of some fairly consistent features of persons with cognitive impairments. First, the cognitive impairment may generally interfere with an understanding of the significance of a criminal interrogation and confession, or a Miranda warning, or the failure to assert one's desire to talk to an attorney. Second, there is often a desire to hide the cognitive impairment or try to "pass" as a person without a disability. This will cause the person to act as though he or she can fully comprehend every step of the criminal investigation when that is not the case. Third, there is a tendency to want to please authority and tell law enforcement officers or prosecuting attorneys what they want to hear, which unfortunately may be that he or she is guilty of committing a crime that they did not commit.

Disability Rights Montana supports HB 354 as it would require that confessions given during a custodial interrogation are preserved and will be available where there are issues as to whether confessions were freely given and whether they were the result of characteristics common to persons with cognitive impairments.

Thank you,

Beth Brenneman, Staff Attorney
Disability Rights Montana

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: Chairman Gary L. Perry, on March 30, 2009 at 8:00
A.M., in Room 303 Capitol

ROLL CALL

Members Present:

Sen. Gary L. Perry, Chairman (R)
Sen. Aubyn Curtiss (R)
Sen. John Esp (R)
Sen. Greg Hinkle (R)
Sen. Carol C. Juneau (D)
Sen. Cliff Larsen (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)

Members Excused: Sen. Larry Jent (D)
Sen. Jim Shockley, Vice Chairman (R)

Members Absent: None

Staff Present: Valencia Lane, Legislative Branch
Pam Schindler, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 132, 3/23/2009

Executive Action: HB 102-Remove from Table-failed, HB
534-Be Concurred In As Amended, HB
431-Remove from Table/Tabled,
HB 132-Motion Withdrawn, HB 228-Be
Concurred in As Amended

Distributed to the Committee Members regarding HB 228 heard,
3/17/09:

[EXHIBIT\(jus70a01\)](#)

EXECUTIVE ACTION ON HB 102

00:02:05 **Motion:** Sen. Juneau moved **TO REMOVE HB 102 FROM THE
TABLE.**

[EXHIBIT\(jus70a02\)](#)

[EXHIBIT\(jus70a03\)](#)

Discussion:

00:03:39 Sen. Perry

00:04:20 Sen. Moss

00:04:54 Sen. Juneau

00:06:05 **Vote:** Motion that **HB 102 BE REMOVED FROM THE TABLE**
failed 6-6 by roll call vote with Sen. Jent, Sen.
Juneau, Sen. Larsen, Sen. Laslovich, Sen. Moss,
and Sen. Perry voting aye. Sen. Jent and Sen.
Shockley voted by proxy.

(Sen. Shockley entered room)

EXECUTIVE ACTION ON HB 534

00:07:43 **Motion:** Sen. Juneau moved that **HB 534 BE CONCURRED IN.**

00:07:55 Valencia Lane, Legislative Services Division

00:09:31 Sen. Juneau **WITHDREW THE MOTION THAT HB 534 BE
CONCURRED IN.**

00:09:38 **Motion:** Sen. Juneau moved that **HB 534 BE CONCURRED IN
AS AMENDED.** (Amended in previous executive action
3/19/09.)

Discussion:

00:11:11 Ms. Lane

00:11:48 Sen. Shockley

00:12:19 Ms. Lane

00:15:35 **Motion:** Sen. Shockley moved that **HB 534 BE AMENDED.**

[EXHIBIT\(jus70a04\)](#)

Discussion:

00:17:15 Ms. Lane
00:19:25 Sen. Shockley
00:20:13 Sen. McGee
00:20:51 Ms. Lane
00:22:57 Sen. Juneau
00:23:32 Sen. Esp
00:23:46 Sen. Perry
00:23:50 Ms. Lane
00:27:50 Sen. McGee
00:28:12 Sen. Shockley
00:28:55 Sen. Laslovich
00:30:18 Sen. Shockley
00:33:20 Sen. Perry
00:33:29 Sen. Shockley
00:34:02 Sen. Laslovich
00:37:16 Sen. Perry
00:37:42 Sen. Shockley
00:38:42 Sen. McGee

00:39:03 **Vote:** Motion that **HB 534 BE AMENDED** carried
unanimously by voice vote. Sen. Jent voted by proxy.

00:39:24 **Motion:** Sen. Shockley moved that **HB 534 BE CONCURRED
IN AS AMENDED.**

00:39:43 **Motion:** Sen. Esp moved that **HB 534 BE AMENDED BY
CHANGING "REQUEST" TO "MOTION."**

Discussion:

00:40:07 Ms. Lane

00:40:48 **Vote:** Motion that **HB 534 BE AMENDED** carried
unanimously by voice vote. Sen. Jent voted by proxy.

00:40:56 **Motion:** Sen. Shockley moved that **HB 534 BE CONCURRED
IN AS AMENDED.**

00:41:06 **Motion:** Sen. Shockley moved that **HB 534 BE AMENDED BY
CHANGING ON PAGE 1, FROM "THE JUDGE MAY ADMIT" TO "THE
JUDGE SHALL ADMIT."**

Discussion:

00:41:31 Sen. McGee

00:41:54 **Vote:** Motion that **HB 534 BE AMENDED** carried 10-2 by voice vote with Sen. Juneau and Sen. Murphy voting no. Sen. Jent voted by proxy.

00:42:12 **Motion:** Sen. Shockley moved that **HB 534 BE CONCURRED IN AS AMENDED.**

Discussion:

00:42:29 Sen. McGee

00:43:10 Sen. Shockley

00:45:42 **Motion/Vote:** Sen. Laslovich moved that **HB 534 BE AMENDED BY REINSERTING SECTION #6.** Motion carried unanimously by voice vote. Sen. Jent voted by proxy.

00:46:29 **Motion/Vote:** Sen. McGee moved that **HB 534 BE CONCURRED IN AS AMENDED.** Motion carried unanimously by voice vote. Sen. Jent voted by proxy. Sen. Shockley will carry HB 534 on the Senate floor.

00:47:29 Ms. Lane

00:48:05 Sen. Shockley

00:48:10 Sen. McGee

EXECUTIVE ACTION ON HB 431

00:48:17 **Motion:** Sen. Shockley moved that **HB 431 BE REMOVED FROM THE TABLE.**

Discussion:

00:49:04 Ms. Lane

00:49:41 Sen. Esp

00:50:06 **Vote:** Motion that **HB 431 BE REMOVED FROM THE TABLE** carried 6-5 by roll call vote with Sen. Curtiss, Sen. Esp, Sen. Hinkle, Sen. McGee, and Sen. Murphy voting no. (Present and voting only, Sen. Jent did not vote.)

(Sen. Shockley absent from room)

00:51:40 **Motion/Vote:** Sen. McGee moved that **HB 431 BE TABLED**.
Motion carried 7-3 by roll call vote with Sen. Juneau,
Sen. Larsen, and Sen. Moss voting no. (Sen. Shockley
and Sen. Jent did not vote by proxy.)

00:53:08 break

(Sen. Jent entered room)

HEARING ON HB 132

Opening Statement by Sponsor:

00:59:38 Rep. Ron Stoker (R), HD 87, opened the hearing on HB
132, Diversion from involuntary commitment to short-
term inpatient treatment.

EXHIBIT (jus70a05)

Proponents' Testimony:

01:09:46 Anita Roessmann, Attorney, Disability Rights Montana
01:17:32 Kathy McGowan, Community Mental Health Centers;
Sheriffs and Peace Officers Association; Montana County
Attorneys Association
01:22:03 Bob Olsen, Montana Hospital Association; also for Mike
Foster, Wheatland Hospital
01:25:31 Aimee Grmoljez, Billings Clinic
01:27:58 Matt Kuntz, Executive Director, National Alliance
Mental Illness (NAMI) Montana
01:30:09 Brett Linneweber, Park County Attorney, Montana County
Attorneys Association
01:35:10 Gordon Morris, Lewis and Clark County Commissioners

Opponents' Testimony:

01:37:06 Eve Franklin, Office of the Governor
01:42:16 Ed Amberg, Director, Montana State Hospital, Warm
Springs
01:47:59 Mary Dalton, Medicaid Administrator, Adult Services,
Department of Public Health and Human Services (DPHHS)

Informational Testimony:

None

(Sen. Shockley entered room)

Questions from Committee Members and Responses:

01:51:13 Sen. McGee
01:51:35 Ms. Franklin
01:56:53 Sen. McGee
01:57:02 Mr. Amberg
01:57:23 Sen. Murphy
01:57:50 Sen. Larsen
01:58:38 Mr. Amberg
02:01:07 Sen. Larsen
02:01:23 Lou Thompson, Administrator, Addictive and Mental
Disorders Division, DPHHS
02:03:00 Sen. Murphy
02:03:50 Ms. Franklin
02:04:09 Sen. Esp
02:05:00 Rep. Stoker
02:08:08 Sen. Juneau
02:08:53 Ms. Roessmann
02:09:52 Sen. Perry
02:10:12 Mr. Amberg
02:10:37 Sen. Perry
02:10:43 Ms. Dalton

Closing by Sponsor:

02:10:59 Rep. Stoker
02:16:01 break

EXECUTIVE ACTION ON HB 132

02:30:23 **Motion:** Sen. McGee moved that **HB 132 BE CONCURRED IN.**

Discussion:

02:34:04 Sen. Esp
02:35:10 Ms. Lane
02:35:34 Sen. Curtiss
02:36:45 Sen. McGee **WITHDREW THE MOTION THAT HB 132 BE CONCURRED
IN.**

EXECUTIVE ACTION ON HB 228

02:37:14 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN.**

Discussion:

02:42:14 **Motion:** Sen. McGee moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a06)

Discussion:

02:45:43 Sen. Jent
02:45:49 Sen. Laslovich
02:47:14 Sen. McGee
02:48:26 Sen. Shockley
02:49:18 Sen. McGee

02:49:54 **Vote:** Motion that **HB 228 BE AMENDED** carried
unanimously by voice vote.

02:50:20 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN**
AS AMENDED.

02:50:55 **Motion:** Sen. Perry moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a07)

Discussion:

02:51:44 Sen. McGee
02:52:51 Ms. Lane
02:53:20 Sen. Esp
02:53:55 Sen. McGee
02:54:10 Sen. Jent
02:54:46 Sen. Hinkle
02:55:07 Sen. Jent

02:55:18 **Vote:** Motion that **HB 228 BE AMENDED** carried 11-1 by
voice vote with Sen. Esp voting no.

02:55:38 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN**
AS AMENDED.

02:56:22 **Motion:** Sen. McGee moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a08)

02:57:10 **Vote:** Motion that **HB 228 BE AMENDED** carried 11-1 by
voice vote with Sen. Juneau voting no.

02:57:25 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

Discussion:

02:57:40 Sen. Shockley

02:58:20 Sen. Jent

02:58:50 **Motion/Vote:** Sen. Laslovich moved that **HB 228 BE AMENDED.** Motion carried unanimously by voice vote.
EXHIBIT(jus70a09)

02:59:44 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:00:14 **Motion:** Sen. Shockley moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a10)

Discussion:

03:01:13 Sen. McGee

03:01:34 **Vote:** Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Juneau voting no.

03:01:47 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:02:16 **Motion:** Sen. Jent moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a11)

Discussion:

03:03:18 Sen. Shockley

03:03:39 Sen. Jent

03:03:44 Sen. Esp

03:03:56 Sen. McGee

03:04:16 **Vote:** Motion that **HB 228 BE AMENDED** carried 11-1 by voice vote with Sen. Juneau voting no.

03:04:27 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

03:04:46 **Motion:** Sen. Shockley moved that **HB 228 BE AMENDED.**
EXHIBIT(jus70a12)

Discussion:

03:06:36 Sen. Perry
03:07:13 Sen. Shockley
03:11:59 Sen. McGee
03:13:43 Sen. Esp
03:14:34 Sen. Shockley
03:15:28 Sen. Hinkle
03:16:42 Sen. Laslovich
03:20:40 Sen. Shockley
03:21:51 Sen. Perry
03:22:10 Sen. Shockley
03:22:46 Sen. Perry
03:23:21 Sen. Shockley
03:24:50 Sen. Larsen
03:25:29 Sen. Shockley
03:25:59 Sen. Juneau
03:26:40 Sen. Shockley
03:27:48 Sen. Juneau
03:28:02 Sen. Shockley
03:28:11 Sen. Juneau
03:29:48 Sen. Shockley
03:30:23 Sen. Juneau
03:30:48 Sen. Shockley
03:31:08 Sen. Curtiss
03:31:46 Sen. Shockley
03:32:50 Sen. Esp
03:32:52 Sen. Perry
03:33:01 Sen. Jent
03:34:07 Sen. McGee
03:35:07 Sen. Shockley

03:35:49 **Vote:** Motion that **HB 228 BE AMENDED** failed 4-8 by roll call vote with Sen. Hinkle, Sen. McGee, Sen. Perry, and Sen. Shockley voting aye.

03:36:45 **Motion:** Sen. Jent moved that **HB 228 BE AMENDED**.
EXHIBIT(jus70a13)

Discussion:

03:43:20 Sen. Shockley
03:46:32 Sen. Esp
03:49:03 Sen. McGee
03:49:23 Sen. Jent
03:49:56 Sen. McGee
03:51:06 Sen. Larsen
03:51:48 Sen. Hinkle
03:53:15 Sen. Laslovich

03:57:50 Sen. Perry
 03:58:22 Sen. Shockley
 04:01:03 Sen. Curtiss
 04:02:10 Sen. Murphy
 04:04:14 Sen. Perry
 04:04:24 Sen. McGee
 04:05:09 Sen. Perry
 04:05:47 Sen. McGee
 04:07:19 Sen. Perry
 04:08:08 Sen. McGee
 04:08:39 Sen. Perry
 04:10:11 Sen. McGee
 04:10:57 Sen. Perry
 04:11:46 Sen. McGee
 04:12:12 Sen. Perry
 04:12:23 Sen. Shockley
 04:13:08 Sen. Moss

04:14:37 **Vote:** Motion that **HB 228 BE AMENDED** carried 7-5 by roll call vote with Sen. Curtiss, Sen. Hinkle, Sen. McGee, Sen. Murphy, and Sen. Shockley voting no.

04:15:33 **Motion:** Sen. McGee moved that **HB 228 BE CONCURRED IN AS AMENDED.**

04:15:41 **Motion:** Sen. Jent moved that **HB 228 BE AMENDED.**
[EXHIBIT\(jus70a14\)](#)

Discussion:

04:18:12 Sen. McGee
 04:18:57 Ms. Lane
 04:19:38 Sen. Jent
 04:19:59 Sen. McGee
 04:20:04 Ali Bovingdon, Assistant Attorney General, Department of Justice
 04:20:40 Sen. McGee
 04:20:45 Ms. Bovingdon
 04:21:10 Sen. Perry
 04:21:31 Sen. Shockley
 04:21:45 Sen. Perry
 04:21:54 Sen. Shockley
 04:22:30 Sen. Perry
 04:22:44 Sen. Shockley

(Sen. Esp absent from room)

04:22:59 Ms. Lane
04:23:58 Sen. Perry
04:24:14 Sen. McGee
04:24:25 Sen. Jent
04:24:40 Sen. Shockley
04:25:34 Ms. Lane

04:25:54 **Vote:** Motion that **HB 228 BE AMENDED** carried
unanimously by voice vote. Sen. Esp voted by proxy.

04:26:08 **Motion/Vote:** Sen. McGee moved that **HB 228 BE CONCURRED
IN AS AMENDED**. Motion carried 8-4 by roll call vote
with Sen. Murphy, Sen. Moss, Sen. Juneau, and Sen.
Hinkle voting no. Sen. Esp voted by proxy. Sen. McGee
will carry HB 228 on the Senate floor.

ADJOURNMENT

Adjournment: 12:40 P.M.

Pam Schindler, Secretary

ps

Additional Documents:

EXHIBIT ([jus70aad.pdf](#))

Amendments to House Bill No. 534
3rd Reading Copy

Requested by Senator Jim Shockley

For the Senate Judiciary Committee

Prepared by Jeremy Gersovitz
March 27, 2009 (11:25am)

1. Page 1, line 23.

Strike: "6"

Insert: "5"

2. Page 3, line 11 through page 4, line 3,

Strike: section 4 in its entirety

Insert: "NEW SECTION. **Section 4. Exceptions to custodial recording requirements.** A judge may admit statements or evidence of statements that do not conform to [section 3] if, at hearing, the state proves by a preponderance of the evidence that:

(1) the statements have been made voluntarily and are reliable; or

(2) one or more of the following circumstances existed at the time of the custodial interrogation:

(a) the questions put forth by law enforcement personnel and the person's responsive statements were part of the routine processing or booking of the person;

(b) before or during a custodial interrogation, the person unambiguously declared that the person would respond to the law enforcement officer's questions only if the person's statements were not electronically recorded;

(c) the failure to electronically record an interrogation in its entirety was the result of unforeseeable equipment failure and obtaining replacement equipment was not practicable;

(d) exigent circumstances prevented the making of an electronic recording of the custodial interrogation;

(e) the person's statements were surreptitiously recorded by or under the direction of law enforcement personnel;

(f) the person's statement was made during a custodial interrogation that was conducted in another state by peace officers of that state in compliance with the laws of that state; or

(g) the person's statement was made spontaneously and not in

response to a question."

Renumber: subsequent sections

3. Page 4, line 5 through line 11.

Following: "INSTRUCTION."

Strike: "If" through "l." on line 11

Insert: "If the defendant objects to the introduction of evidence under [section 3] and the court finds by a preponderance of the evidence that the statements are admissible, the judge shall, upon request of the defendant, provide the jury with a cautionary instruction."

4. Page 4, line 13 through page 4, line 23.

Strike: section 6 in its entirety

Renumber: subsequent sections

5. Page 4, line 25.

Strike: "6"

Insert: "5"

6. Page 4, line 26.

Strike: "6"

Insert: "5"

- END -